



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

THORPE NORTH & WESTERN, LLP.  
8180 SOUTH 700 EAST, SUITE 200  
SANDY UT 84070

**COPY MAILED**

NOV 16 2005

**OFFICE OF PETITIONS**

In re Application of  
David FIKSTAD et al.  
Application No. 10/764,016  
Filed: January 23, 2004  
Attorney Docket No. 23625.CON

:  
:  
: DECISION DISMISSING PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the renewed petition under 37 CFR 1.78(a)(3), filed November 7, 2005, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of prior-filed nonprovisional applications set forth in the concurrently filed amendment.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The amendment submitted concurrently with the petition as drafted is unacceptable and, therefore, is not considered a proper reference under 37 CFR 1.78(a)(2)(i). In this regard, the amendment does not include an instruction, which unambiguously identifies the location, to delete one or more paragraphs of the specification, replace a paragraph with one or more replacement paragraphs, or add one or more paragraphs and, as such, does not comply with 37 CFR 1.121.

Application No. 10/764,016

In view of the above, the petition is **DISMISSED**.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).<sup>1</sup>

Further correspondence with respect to this matter should be addressed as follows:

By mail:                    Mail Stop PETITIONS  
                                  Commissioner for Patents  
                                  Post Office Box 1450  
                                  Alexandria, VA 22313-1450

By hand:                    Customer Service Window  
                                  Mail Stop Petitions  
                                  Randolph Building  
                                  401 Dulany Street  
                                  Alexandria, VA 22314

By fax:                     (571) 273-8300  
                                  ATTN: Office of Petitions

Any questions concerning this matter may be directed to David Bucci at (571) 272-7099.



Brian Hearn  
Petitions Examiner  
Office of Petitions

---

<sup>1</sup> The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).